

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Strauss	Team: Squad #5	CCRB Case #: 202000559	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 01/20/2020 4:08 AM, Monday, 01/20/2020 4:23 AM, Monday, 01/20/2020 6:44 AM	Location of Incident: § 87(2)(b) § 87(2)(b) Deli); 52nd Precinct stationhouse	Precinct: 52	18 Mo. SOL 7/20/2021	EO SOL 3/6/2022	
Date/Time CV Reported Tue, 01/21/2020 8:16 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 01/21/2020 8:16 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Adrian Wynne	17092	967727	052 PCT
2. POF Rhona Hall	24804	943343	052 PCT
3. SGT Michael Whooley	02673	943951	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jovanny Lopez	12976	960829	052 PCT
2. POM Edgar Zayas	00617	961584	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Rhona Hall	Force: At § 87(2)(b) in the Bronx, Police Officer Rhona Hall used physical force against § 87(2)(b)	§ 87(2)(b)
B.SGT Michael Whooley	Discourtesy: At the 52nd Precinct stationhouse, Sergeant Michael Whooley spoke discourteously to § 87(2)(b)	§ 87(2)(b)
C.SGT Michael Whooley	Abuse: At the 52nd Precinct stationhouse, Sergeant Michael Whooley refused to provide his name to § 87(2)(b)	§ 87(2)(b)
D.SGT Michael Whooley	Abuse: At the 52nd Precinct stationhouse, Sergeant Michael Whooley refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(b)

### Case Summary

On January 21, 2020, § 87(2)(b) filed this complaint on the CCRB website.

On January 20, 2020, at approximately 4:08 a.m., § 87(2)(b) entered § 87(2)(b) Deli, located at § 87(2)(b) in the Bronx, with § 87(2)(b) and three other friends. § 87(2)(b) a deli employee, called 911 after § 87(2)(b) and her friends refused to leave the store. Police Officers Jovanny Lopez, Edgar Zayas, Rhona Hall, and Adrian Wynne, all assigned to the 52nd Precinct, arrived and instructed § 87(2)(b) and her friends to leave. After § 87(2)(b) and her friends did not comply, PO Hall forcibly took § 87(2)(b) to the ground (**Allegation A: Force**, § 87(2)(g)). The officers arrested § 87(2)(b) and transported her to the 52nd Precinct stationhouse. At the stationhouse, Sergeant Michael Whooley of the 52nd Precinct made several profane remarks to § 87(2)(b) “Who the fuck is § 87(2)(b) “I don’t give a fuck about § 87(2)(b) “Born in § 87(2)(b) she knows every fucking thing,” and, “You fucked it up, it’s 2673” (**Allegation B: Discourtesy**, § 87(2)(g)). PO Wynne issued § 87(2)(b) summonses for unlawful possession of marijuana, disorderly conduct, and trespassing (BR 01). At approximately 6:44 a.m., as § 87(2)(b) was about to be released, she asked Sgt. Whooley for his name and shield number, which he allegedly failed to provide (**Allegations C-D: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) refused to leave the stationhouse, and she was arrested again for trespassing and eventually released with a desk appearance ticket (BR 02). § 87(2)(g), § 87(4-b)

The investigation obtained BWC footage from PO Lopez, PO Zayas, PO Hall, and PO Wynne (BR 05-09), stationhouse footage from the 52nd Precinct (BR 10-19), surveillance footage from the deli (relevant footage at BR 20-21), and a brief cell phone clip (BR 03), all of which captured the first incident. All video summaries are contained in (BR 22). All references to video evidence below refer to the time-stamp in the video player, and not to any on-screen clock embedded in the footage itself.

This investigation was delayed by the COVID-19 global pandemic and delays in scheduling officers for remote interviews.

### Findings and Recommendations

**Allegation (A) Force: At § 87(2)(b) in the Bronx, Police Officer Rhona Hall used physical force against § 87(2)(b)**

It is undisputed that PO Hall forcibly took § 87(2)(b) to the ground.

The relevant portions of the incident are best captured in the surveillance video footage (BR 21, beginning at approximately 19:58), PO Hall’s BWC footage (BR 07, beginning at approximately 01:18), and PO Zayas’ BWC footage (BR 06, beginning at approximately 03:00). A brief clip from the surveillance footage with a cropped, closer view of the use of force can be found at (BR 41), and a brief clip from PO Zayas’ BWC showing the use of force can be found at (BR 42). A brief clip from PO Hall’s BWC, showing her interaction with § 87(2)(b) in the moments before the use of force, can be found at (BR 43).

In sum, the footage shows: § 87(2)(b) stands at the deli front counter and tells § 87(2)(b) “If you don’t give me my \$20 back, I’m going to smack the shit out of you,” then repeats, “I’m going to smack the shit out of you.” She begins arguing with § 87(2)(b) does not make any movements toward § 87(2)(b) and she does not strike him or attempt to do so at any point. § 87(2)(b) then steps away from the counter and continues arguing with the officers. Approximately one minute later, § 87(2)(b) walks up to the counter and asks § 87(2)(b) for \$20

back. PO Hall tells § 87(2)(b) that she is not getting her money back, and they begin arguing. PO Hall says something inaudible, and § 87(2)(b) asks PO Hall, “Do you have an issue? Let me know if you have an issue.” PO Hall takes a clear step toward § 87(2)(b) and closes the distance between them such that they are standing chest-to-chest, and she asks § 87(2)(b) “Do you have an issue?” § 87(2)(b) does not retreat from PO Hall and continues to argue with her. They repeatedly ask one another if the other has an issue. PO Hall keeps her hands either in her jacket pockets or down at her sides. PO Hall asks § 87(2)(b) “You supposed to be scaring me?” and § 87(2)(b) responds, “Bitch, you...” PO Hall then immediately grabs § 87(2)(b)’s left upper arm, swings her body around, and takes her to the ground. The officers handcuff § 87(2)(b) while she is on the ground.

§ 87(2)(b) acknowledged that (BR 23) she was intoxicated at the time of the incident, that she refused to heed § 87(2)(b)’s repeated requests to leave his store, and that she was verbally aggressive toward him and asked him a few times for her money back. PO Lopez, PO Zayas, PO Hall, and PO Wynne arrived a few minutes later. § 87(2)(b) explained the situation to PO Hall. § 87(2)(b) told PO Hall that she wanted her money back and PO Hall told her to step outside. PO Hall then stood very close to § 87(2)(b) and § 87(2)(b) told her, “Get out of my face, bitch.” They stood approximately one foot away from each other, in front of the main counter. PO Hall then grabbed § 87(2)(b)’s upper arms with two hands, picked her up, and slammed her onto the ground. § 87(2)(b)’s head hit the floor and she fell onto her left side. § 87(2)(b) then blacked out and did not recall what happened next. She sustained bruising to both knees and pain in her neck, back, and head. She did not seek any medical treatment. § 87(2)(b) provided her approximate height as 5’0” and weight as 110 pounds.

§ 87(2)(b) phone statement (BR 24) was generally consistent with § 87(2)(b)’s testimony. She added that PO Hall approached § 87(2)(b) and stood about two feet away from her at the counter. § 87(2)(b) told PO Hall to get out of her face. PO Hall then grabbed § 87(2)(b)’s shoulders with both hands and swung her so that she hit an ice cream freezer and fell onto the floor.

§ 87(2)(b) recounted (BR 25) that he explained to PO Lopez and PO Zayas that he wanted to close the store. § 87(2)(b) came up to the counter and asked for her money back for the food she had purchased, and § 87(2)(b) said that he was willing to give her money back. PO Hall then arrived and spoke with § 87(2)(b). They stood very close to each other, and § 87(2)(b) called PO Hall a “bitch.” § 87(2)(b) used several other profane words while speaking with PO Hall. PO Hall did not say anything. PO Hall then grabbed § 87(2)(b)’s shoulders with two hands and flipped her onto the floor.

PO Hall’s testimony (BR 26) was consistent with the BWC footage, with the following additions and exceptions: PO Hall had not previously interacted with § 87(2)(b) and did not know if § 87(2)(b) appeared to be under the influence. § 87(2)(b)’s threat to “slap the shit” out of § 87(2)(b) constituted menacing, and she also committed a trespassing violation by refusing to leave the store. § 87(2)(b) approached PO Hall, stood very close to her, and asked, “What are you gonna do?” PO Hall did not recall saying anything to § 87(2)(b). § 87(2)(b) told one of her friends, “Fuck this bitch,” referring to PO Hall. PO Hall then decided to place § 87(2)(b) under arrest and forcibly took her down to the ground. PO Hall took § 87(2)(b) down to the ground because she “aggressively got into [PO Hall’s] face.” Prior to taking § 87(2)(b) to the ground, PO Hall did not tell her that she was under arrest or instruct her to put her arms behind her back. PO Hall testified that she did not take any intermediate actions prior to using force because § 87(2)(b) aggressively stood close to her and was verbally aggressive to § 87(2)(b). During her interview in March 2021, PO Hall provided her approximate height as 5’9” and her weight as 200 pounds (BR 27).

PO Lopez’s and PO Wynne’s testimonies were generally consistent with PO Hall’s. PO Lopez

testified (BR 28) that he saw § 87(2)(b) and PO Hall arguing but could not provide any specific details about the argument. PO Lopez did not recall how the interaction progressed from the argument to force being used. PO Wynne testified (BR 29) that § 87(2)(b) was aggressive and was yelling. She was aggressive insofar as she refused to leave and was yelling. PO Wynne did not recall having any safety concerns about § 87(2)(b) then got into PO Hall's face, though PO Wynne did not see how they came to be in close proximity. PO Wynne did not recall why PO Hall utilized a forcible takedown.

PO Hall prepared a TRI Report documenting that she used a forcible takedown to overcome resistance or aggression (BR 30). PO Wynne, PO Lopez, and PO Zayas completed corresponding TRI Reports (BR 31-33). The supervisor's TRI Report (BR 34) noted that § 87(2)(b) became combative and stepped into PO Hall's face, and that PO Hall immediately forced § 87(2)(b) to the ground and handcuffed her.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Officers may use force when it is reasonable to place a person in custody, to ensure the safety of themselves, and to protect other officers. Any use of force must be reasonable under the circumstances and not excessive. When appropriate, officers will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In determining whether the use of force is reasonable, relevant factors include the nature and severity of the crime, the actions taken by the subject, the immediacy of the perceived threat or harm to officers, whether the subject is actively resisting custody, and whether the subject is attempting to evade arrest by flight. The size, age, and condition of the subject in comparison to the officer(s) using force is also a relevant factor, as is the number of subjects in comparison to the number of officers on scene. NYPD Patrol Guide Procedure 221-01 (BR 35).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g) § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

**Allegation (B) Discourtesy: At the 52nd Precinct stationhouse, Sergeant Michael Whooley spoke discourteously to § 87(2)(b)**

It is undisputed that Sgt. Whooley told § 87(2)(b) “Who the fuck is § 87(2)(b) “I don’t give a fuck about § 87(2)(b) “Born in § 87(2)(b), she knows every fucking thing,” and “You fucked it up, it’s 2673.”

§ 87(2)(b) did not testify that Sgt. Whooley used discourteous language toward her.

PO Lopez’s BWC footage shows Sgt. Whooley and § 87(2)(b) who is handcuffed, arguing in the 52<sup>nd</sup> Precinct stationhouse (BR 05, at 09:57). § 87(2)(b) says that her aunt, § 87(2)(b) will be arriving shortly. At 10:10, Sgt. Whooley says, “Who the fuck is § 87(2)(b) § 87(2)(b) says that her aunt is an attorney and Sgt. Whooley replies, “I don’t give a fuck about § 87(2)(b) At 12:03, PO Lopez tells Sgt. Whooley that § 87(2)(b) was born in § 87(2)(b) and Sgt. Whooley says, “Born in § 87(2)(b), she knows every fucking thing.” At 12:46, § 87(2)(b) asks Sgt. Whooley for his shield number and he yells, “2673.” § 87(2)(b) repeats the number and later says aloud, “2073.” Sgt. Whooley then yells, “You fucked it up! It’s 2673!” Throughout the interaction, § 87(2)(b) curses at Sgt. Whooley and the other officers.

Sgt. Whooley’s testimony (BR 36) was largely consistent with BWC footage. He acknowledged telling § 87(2)(b) “Who the fuck is § 87(2)(b) “She’s § 87(2)(b) years old, she knows every fucking thing,” and “You fucked it up, it’s 2673.” Sgt. Whooley recounted that § 87(2)(b) was angry, was arguing with several officers, and was not compliant with PO Hall who needed to search her. Sgt. Whooley made the first two statements because he was frustrated. He told § 87(2)(b) “You fucked it up, it’s 2673,” because he had previously provided his name and shield number approximately five to 10 times and when § 87(2)(b) got his shield number wrong, he corrected her. Sgt. Whooley initially did not recall if he told § 87(2)(b) “I don’t give a fuck about § 87(2)(b) After viewing BWC footage, he confirmed that he made that statement because he was frustrated.

The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must “maintain a higher standard of integrity than is generally expected of others.” NYPD Patrol Guide Procedure 200-02 (BR 37). The NYPD’s disciplinary decisions “have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer’s verbal slip does not rise to the level of actionable misconduct.” NYPD Disciplinary Case No. 76927/04 (2004) (BR 38).

At the time Sgt. Whooley used discourteous language toward § 87(2)(b) she was handcuffed inside a stationhouse, § 87(2)(g)

**Allegation (C) Abuse of Authority: At the 52nd Precinct stationhouse, Sergeant Michael Whooley refused to provide his name to § 87(2)(b)**

**Allegation (D) Abuse of Authority: At the 52nd Precinct stationhouse, Sergeant Michael Whooley refused to provide his shield number to § 87(2)(b)**

As noted above, BWC footage showed that Sgt. Whooley stated his shield number to § 87(2)(b) earlier in the incident. § 87(2)(b) did not recount that fact in her testimony to the CCRB. However, she did testify that she met Sgt. Whooley again at the stationhouse desk a few hours later when she was being released. At that time, she asked Sgt. Whooley for his name and shield number. He initially provided the number “555” and then provided a shield number so quickly that § 87(2)(b) did not understand him. Sgt. Whooley ultimately did not provide his name or shield number to her. Sgt. Whooley then handcuffed § 87(2)(b) and led her back to a holding cell. § 87(2)(b) was still intoxicated at that point.

The investigation did not obtain any video footage depicting this interaction.

Sgt. Whooley confirmed that § 87(2)(b) requested his name when she was being released from custody, and that he stated his surname to her. § 87(2)(b) asked for his first name several times, and he refused to provide it. Sgt. Whooley did not think that § 87(2)(b) asked for his shield number during this particular interaction. § 87(2)(b) started yelling and Sgt. Whooley told her several times to leave, but she refused to leave. § 87(2)(b) was then re-arrested for trespassing. Sgt. Whooley denied that he ever told her his shield number was “555,” and denied that he ever refused to provide his surname or shield number to § 87(2)(b).

PO Wynne witnessed this portion of the incident. He recounted that § 87(2)(b) saw Sgt. Whooley and began yelling as she was about to be released, and that she refused several orders to leave the stationhouse. PO Wynne did not recall hearing § 87(2)(b) ask Sgt. Whooley for his name. PO Wynne was not sure whether § 87(2)(b) asked Sgt. Whooley for his shield number. He denied hearing Sgt. Whooley refuse to provide his name or shield number. He did not know whether Sgt. Whooley provided his shield number as 555.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 39).
- PO Hall has been a member of the NYPD for 14 years and this is the first CCRB complaint to which she has been a subject.
- Sgt. Whooley has been a member of the NYPD for 14 years and has been a subject in nine CCRB

complaints and 17 allegations, five of which were substantiated:

- 201407041 involved substantiated allegations of physical force, frisk, search of person, vehicle stop, and vehicle search against Sgt. Whooley. The Board recommended Charges. Sgt. Whooley was found not guilty at the APU and thus the NYPD did not impose discipline.
- § 87(2)(g) [REDACTED]
- § 87(2)(g) [REDACTED]

#### **Mediation, Civil, and Criminal Histories**

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As of December 18, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (BR 40).
- According to the Office of Court Administration (OCA), § 87(2)(b) [REDACTED] has no history of convictions in New York City (BR 04). The OCA database has no record of any case resulting from the DAT she received in this case.

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Squad: 5

Investigator:	<u>Laura Strauss</u>	<u>SI Laura Strauss</u>	<u>12/7/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Daniel Giansante</u>	<u>IM Daniel Giansante</u>	<u>December 7, 2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date